



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB2500

Introduced 2/20/2009, by Rep. Kenneth Dunkin

SYNOPSIS AS INTRODUCED:

30 ILCS 550/1

from Ch. 29, par. 15

Amends the Public Construction Bond Act. Authorizes a public body to waive or lower the requirement of a surety bond for a public construction contract if the contractor is a small business enterprise. Defines a small business enterprise.

LRB096 10504 JAM 20676 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Construction Bond Act is amended by
5 changing Section 1 as follows:

6 (30 ILCS 550/1) (from Ch. 29, par. 15)

7 Sec. 1. Except as otherwise provided by this Act, all
8 officials, boards, commissions, or agents of this State in
9 making contracts for public work of any kind costing over
10 \$50,000 to be performed for the State, and all officials,
11 boards, commissions, or agents of any political subdivision of
12 this State in making contracts for public work of any kind
13 costing over \$5,000 to be performed for the political
14 subdivision, shall require every contractor for the work to
15 furnish, supply and deliver a bond to the State, or to the
16 political subdivision thereof entering into the contract, as
17 the case may be, with good and sufficient sureties. The amount
18 of the bond shall be fixed by the officials, boards,
19 commissions, commissioners or agents, and the bond, among other
20 conditions, shall be conditioned for the completion of the
21 contract, for the payment of material used in the work and for
22 all labor performed in the work, whether by subcontractor or
23 otherwise.

1 If the contract is for emergency repairs as provided in the
2 Illinois Procurement Code, proof of payment for all labor,
3 materials, apparatus, fixtures, and machinery may be furnished
4 in lieu of the bond required by this Section.

5 Each such bond is deemed to contain the following
6 provisions whether such provisions are inserted in such bond or
7 not:

8 "The principal and sureties on this bond agree that all the
9 undertakings, covenants, terms, conditions and agreements of
10 the contract or contracts entered into between the principal
11 and the State or any political subdivision thereof will be
12 performed and fulfilled and to pay all persons, firms and
13 corporations having contracts with the principal or with
14 subcontractors, all just claims due them under the provisions
15 of such contracts for labor performed or materials furnished in
16 the performance of the contract on account of which this bond
17 is given, when such claims are not satisfied out of the
18 contract price of the contract on account of which this bond is
19 given, after final settlement between the officer, board,
20 commission or agent of the State or of any political
21 subdivision thereof and the principal has been made.

22 Each bond securing contracts between the Capital
23 Development Board or any board of a public institution of
24 higher education and a contractor shall contain the following
25 provisions, whether the provisions are inserted in the bond or
26 not:

1 "Upon the default of the principal with respect to
2 undertakings, covenants, terms, conditions, and agreements,
3 the termination of the contractor's right to proceed with the
4 work, and written notice of that default and termination by the
5 State or any political subdivision to the surety ("Notice"),
6 the surety shall promptly remedy the default by taking one of
7 the following actions:

8 (1) The surety shall complete the work pursuant to a
9 written takeover agreement, using a completing contractor
10 jointly selected by the surety and the State or any
11 political subdivision; or

12 (2) The surety shall pay a sum of money to the obligee,
13 up to the penal sum of the bond, that represents the
14 reasonable cost to complete the work that exceeds the
15 unpaid balance of the contract sum.

16 The surety shall respond to the Notice within 15 working
17 days of receipt indicating the course of action that it intends
18 to take or advising that it requires more time to investigate
19 the default and select a course of action. If the surety
20 requires more than 15 working days to investigate the default
21 and select a course of action or if the surety elects to
22 complete the work with a completing contractor that is not
23 prepared to commence performance within 15 working days after
24 receipt of Notice, and if the State or any political
25 subdivision determines it is in the best interest of the State
26 to maintain the progress of the work, the State or any

1 political subdivision may continue to work until the completing
2 contractor is prepared to commence performance. Unless
3 otherwise agreed to by the procuring agency, in no case may the
4 surety take longer than 30 working days to advise the State or
5 political subdivision on the course of action it intends to
6 take. The surety shall be liable for reasonable costs incurred
7 by the State or any political subdivision to maintain the
8 progress to the extent the costs exceed the unpaid balance of
9 the contract sum, subject to the penal sum of the bond.".

10 The surety bond required by this Section may be acquired
11 from the company, agent or broker of the contractor's choice.
12 The bond and sureties shall be subject to the right of
13 reasonable approval or disapproval, including suspension, by
14 the State or political subdivision thereof concerned. In the
15 case of State construction contracts, a contractor shall not be
16 required to post a cash bond or letter of credit in addition to
17 or as a substitute for the surety bond required by this
18 Section.

19 When other than motor fuel tax funds, federal-aid funds, or
20 other funds received from the State are used, a political
21 subdivision may allow the contractor to provide a
22 non-diminishing irrevocable bank letter of credit, in lieu of
23 the bond required by this Section, on contracts under \$100,000
24 to comply with the requirements of this Section. Any such bank
25 letter of credit shall contain all provisions required for
26 bonds by this Section.

1 Notwithstanding this or any other law, in order to promote
2 business competition and the stability and growth of small
3 businesses, any public body subject to this Act may waive or
4 lower the required amount of a surety bond under this or any
5 other Act for a public construction contract if the contractor
6 is a small business enterprise. As used in this Section, a
7 "small business enterprise" means a construction business
8 whose annual sales and receipts do not exceed \$10,000,000 and
9 that is otherwise a small business as defined by rule of the
10 Department of Central Management Services under subsection (b)
11 of Section 45-45 of the Illinois Procurement Code.

12 (Source: P.A. 95-1011, eff. 12-15-08.)